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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,152	06/04/2001	John M. Verbil	1847 USW 0627 PUS	6560

22193 7590 03/24/2006

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EXAMINER

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ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 03/24/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/874,152  
Filing Date: June 04, 2001  
Appellant(s): VERBIL ET AL.

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Mark D. Chuey  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 01/05/2006 appealing from the Office action mailed 06/30/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,844,896	Marks et al.	12-1998
5,668,861	Watts	09-1997
5,600,710	Weisser, Jr. et al.	02-1997
6,597,780	Knoerle et al.	07-2003
5,571,058	Andrews et al.	12-1993

Harry Newton "Newton's  
Telecom Dictionary"  
8TH Edition (Nov, 1994),  
pp. 188

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

***Claims 1, 4-10, and 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisser, Jr. et al. (US PAT # 5,600,710) in view of Knoerle et al (US PAT # 6,597,780) and further in view of Watts (US PAT # 5,668,861).***

Regarding claim 1, Weisser teaches a method of queuing calls to a subscriber of queuing services (see col. 9, lines 12-15) accessed through a subscriber line, the method comprising: provisioning Call Forward on Busy Line on the subscriber line (this reads on determining if the called line is busy "Advertise-on-busy", see col. 9, lines 13-14) to permit detecting a call to the subscriber line at a local switch connected to the subscriber line (the local switch reads SSP 15 and SSP 15', see Fig. 3 and col. 10, lines 8-22); if the subscriber line is busy, queuing the call to the subscriber (see col. 9, lines 12-15); determining that the subscriber line is determined to be not busy, connecting the call to the subscriber with the subscriber line (see col. 9, lines 4-6).

While Weisser utilizes an intelligent peripheral 39 (Fig. 3) and teaches that the queued call is connected to the intelligent peripheral (see abstract), Weisser does not specifically teach queuing the call in the intelligent peripheral (IP).

However, Knoerle teaches in an Advanced Intelligent Network (AIN) the service node 300 -known also as IP in the art- (see Fig. 4) is capable of placing calls on hold (see col. 8, lines 27-29 and lines 57-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of holding or placing calls in queues within the service node/IP itself, as taught by Knoerle, into the Weisser system in order to minimize the load on the SCP and free the main network resources. Generally, IPs have been used to perform network functionalities in order to decrease the load on the network elements, such as SCPs.

On one hand, the combination of Weisser in view of Knoerle did not specifically teach the claimed limitation of "dialing the subscriber line from the intelligent peripheral".

On the other hand, Watts teaches a telecommunication system with a notification hold feature. Watts discloses an intelligent peripheral (40) capable of initiating a call (see col. 3, lines 66-67, col. 4, lines 1-7 and Fig. 1).

Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of having the intelligent peripheral call the calling party number (calling party number may read on the subscriber) and connect the call, as taught by Watts into the combination of Weisser in view of Knoerle in order to provide speed and convenience to the calling party, and enhance the efficiency of the system.

Claims 21 and 28 are rejected for the same reasons as discussed above with respect to claims 1. Also, regarding claim 21, having at least one available queue slot is inherent in any queuing process. In order to place a call in queue, a free slot must be available.

Regarding claim 4, forwarding the subscriber line call to a Direct Inward Dial telephone number on the intelligent peripheral reads on using a PBX as the IP. PBXs have been used for so many years.

Claim 5 recites “determining that the subscriber line is not busy comprises setting a Next Event List at the subscriber local switch”. This may read on connecting the caller to the called destination.

Regarding claim 6, the limitation of having the local switch call the intelligent peripheral when the subscriber line is found to be busy in response to a call to the subscriber line reads on the well known Forward on Busy feature. Calls in the queue will be directed to the called destination by monitoring the called line when it becomes idle (see col. 9, lines 43-53 in Weisser).

Claims 7 and 25 recite “determining that the call to the subscriber has been queued for a determined amount of time; requesting that a caller placing the call to the subscriber perform an action to remain in queue; and if the caller does not perform the

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requested action, dequeuing the call". This may read on the service node 300 (in Knoerle) informing the calling party whether he/she wants to remain on the line or not, if so he/she has to press 1, for example, otherwise calls will be terminated. Having the subscriber enter an action or press a number in order to stay connected is also an obvious and well-known feature in the art.

Claims 8 and 26 are rejected for the same reasons as discussed above with respect to claim 1. Also, generating queue utilization statistics based on the collected queue utilization information reads on the number of calls entered the queue and completing these calls based on the priority of the call and the sequence of the call in the queue, see Weisser, col. 9, lines 49-67).

Regarding claims 9 and 27, Weisser teaches an IP or a service node may play different recorded messages to calling subscribers (see col. 10, lines 57-61). Therefore, having IP or the service node announcing the time, how long the call has been entered in the queue, and the number of the call in the queue list would have been obvious and well known.

Claim 10 recites "the intelligent peripheral is a switchless intelligent peripheral". The use of switchless queuing is well known in the art.

Claims 22-23 recite "the service control point instructing the intelligent peripheral



to dial the number of the messaging system and to bridge the received subscriber call to the messaging system call if the service control point determines no queue slots are available. This simply reads on the scenario of having the IP or the service node connecting the call to the mailbox system in the event of not queuing the call. The feature of connecting the caller to a mailbox in order for him/her to leave a message to the called party is an old and well-known feature in the art.

Claim 24 recites “playing a message from the intelligent peripheral to the forwarded call when queuing the forwarded call (this basically reads on the IP playing announcement when the call placed in a queue, see also, col. 10, lines 24-28 in Weisser).

***Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisser, Jr. et al. (US PAT # 5,600,710) in view of Knoerle et al (US PAT # 6,597,780).***

Regarding claim 11, Weisser teaches a method of queuing calls to a subscriber of queuing services (see col. 9, lines 12-15) accessed through a subscriber line, the method comprising: provisioning Call Forward on Busy Line on the subscriber line (this reads on determining if the called line is busy “Advertise-on-busy”, see col. 9, lines 13-14) to permit detecting a call to the subscriber line at a local switch connected to the

subscriber line (the local switch reads SSP 15 and SSP 15', see Fig. 3 and col. 10, lines 8-22); if the subscriber line is busy queuing the call to the subscriber (see col. 9, lines 12-15); determining that the subscriber line is determined to be not busy, connecting the call to the subscriber with the subscriber line (see col. 9, lines 4-6).

While Weisser utilizes an intelligent peripheral 39 (Fig. 3) and teaches that the queued call is connected to the intelligent peripheral (see abstract), Weisser does not specifically teach queuing the call in the intelligent peripheral (IP).

However, Knoerle teaches in an Advanced Intelligent Network (AIN) the service node 300 (see Fig. 4) is capable of placing calls on hold (see col. 8, lines 27-29 and lines 57-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of holding or placing calls in queues within the service node/IP itself, as taught by Knoerle, into the Weisser system in order to minimize the load on the SCP and free the network resources. Generally, IPs have been used to perform network functionalities in order to decrease the load on the network elements, such as SCPs.

Claim 12 recites "the service control point determining if queue slots are available in the intelligent peripheral". This is inherent in any queuing process.

Claims 13-14 recite “the service control point instructing the intelligent peripheral to dial the number of the messaging system and to bridge the received subscriber call to the messaging system call if the service control point determines no queue slots are available. This simply reads on the scenario of having the IP or the service node connecting the call to the mailbox system in the event of not queuing the call. The feature of connecting the caller to a mailbox in order for him/her to leave a message to the called party is an old and well-known feature in the art.

For claims 15 and 19, Weisser teaches an IP or a service node may play different recorded messages to calling subscribers (see col. 10, lines 57-61). Therefore, having IP or the service node announcing the time, how long the call has been entered in the queue, and the number of the call in the queue list would have been obvious and well known.

Regarding claim 16, Weisser teaches the possibility of choosing a service node (this basically means the reference teaches having more than one IP or service node, see col. 9, lines 14-17 and col. 10, lines 26-28), intelligent peripheral implementing at least one call queue (each IP implementing at least one call queue), each call queue associated with one of a plurality of subscribers (this is obvious); at least one service control point (reads on SCP 26 in Fig.3), each intelligent peripheral in communication with one service control point collecting information about each queued call (this reads

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on the service node 39 collecting data and information from the database 26, see Fig. 3, see also, col. 10, lines 55-57). Weisser does not exactly teach data server in communication with the at least one service control point, the data server aggregating queue utilization data for each subscriber. However, it would have been obvious to have this data server accumulating queue utilization data for each subscriber to be used, for example, in billing.

Claims 17-18 are rejected for the same reasons as discussed above with respect to claim 16. The data distributor may read for example, on SMS 37, see col. 4, lines 49-59, in Weisser.

Claim 20 recites "the intelligent peripheral is a switchless intelligent peripheral". The use of switchless queuing is well known in the art.

***Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisser, Jr. et al. in view of Knoerle and further in view of Watts, and further in view of Andrews et al (US PAT # 5,271,058).***

The combination of Weisser, Knoerle and watts alone or in combination does not specifically teach the use of a switchless intelligent peripheral.

However, Andrews teaches a switchless automatic call distributor that is able to perform certain functions such call processing, call queuing, ...etc, (see abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of switchless ACD, as taught by Andrews, into the combination of Weisser, Knoerle, and Watts system in order to have the network performs the functionalities without having to use a switch as described in Andrews.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

***Claims 1, 11, 21, and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of Marks et al. U.S. Patent No. 5,844,896.***

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention in the instant application is fully

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disclosed in patent number 5,844,896 and it is broader than the claimed invention in the patent. No new invention, or new improvement is being claimed in the instant application. Applicant is now attempting to claim broadly that which had been previously described in more detail in the claims of the patent (In re Van Ornum, 214 USPQ 761 CCPA 1982).

Furthermore, there is no apparent reason why Applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent.

#### **(10) Response to Argument**

Regarding Appellant's statement (Appeal Brief, pages 5-6) "Watts discloses an IP which calls a disconnected calling party back". Examiner respectfully disagrees with Appellant's statement because the Examiner focused on one particular feature in Watts. Simply, the feature is having the (IP) initiate a call (see col. 3, lines 66-67 and col. 4, lines 1-3). That is, Watts is applied merely because it teaches that the IP is capable of initiating a call. The discussion about the call being "disconnected" is irrelevant.

Appellant adds (Appeal Brief, page 7) "Combining the **teaching** of Watts with Weisser and Knoerle will result in an inoperative system" and "if the calling party is queued in the IP, and the IP calls the calling party, there is a 100% chance the line will

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be busy". First of all, Appellant's statement is irrelevant because Watts is applied for teaching that the IP is capable of initiating a call. Weisser teaches connecting a call in queue to the called party after the called party's line becomes idle without specifics, and Watts teaches that the IP is capable of initiating a call to a called party, thus it would have been obvious to combine the two in order to establish or connect a call to the called party in Weisser. Second, it appears that Appellant is arguing each reference in the 35 U.S.C. 103(a) individually. In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). That is, Appellant would like to incorporate more features from Watts than what the examiner is relying on, and then appellant concludes that the combination becomes inoperative.

Regarding Appellant's statement (Appeal Brief, page 7) "As such Knoerle does not address the issue of how to determine when a busy line is free", the Examiner respectfully disagrees because there are two different ways to determine when the subscriber line is available. One way is to have the IP monitor the subscriber line, as taught by Marks. The other way is to have the IP periodically dial the subscriber line until the line becomes available (the claimed invention, i.e., claim 1). Both techniques accomplish the same result. The feature of making the determination by placing a call to the subscriber's line is extremely old and obvious. See examiner's Exhibit A.

Also, Appellant states (Appeal Brief, page 7) that Appellant's invention differs from the "Camp on busy feature", which is basically "You want to transfer a call to a phone but it's busy. This telephone system feature will allow you to lock the call you're trying to transfer onto the line that's busy. When it becomes free, the phone will ring and the 'camped-on' call will be connected automatically", see Examiner's Exhibit A. However, Appellant adds "Appellant's invention does not rely on an automatic connection to a busy line when the line becomes free. Rather, Appellant's invention places calls from the IP to determine whether or not the called line is free". After reviewing Appellant's statement carefully, Examiner concluded that placing calls from the IP to determine whether or not the called line is free must be performed automatically. Thus, there is no difference between the "Camp-On" feature and Appellant's invention.

Appellant states (Appeal Brief, page 8) " There is no evidence that a calling party would find Appellant's technique for determining when a subscriber line is open any more convenient than the technique in Weisser". Appellant also adds "Moreover, there is no evidence that Appellant's technique of calling the subscriber line from intelligent peripheral is more efficient or faster than Weisser's technique of having the switch monitor the called line". In fact, the motivation in the reference does not have to be the same motivation the Appellant's specification. Each motivation could be constructed for different purposes. Thus, it is not necessarily to have the motivation in the reference to



be exactly the same motivation in Appellant's Specification. Therefore, Appellant's remarks are not persuasive. The two techniques (monitoring the line until it becomes available or making calls until a call is answered) are analogous, equivalent and achieve the same result.

Regarding Appellant's statement (Appeal Brief, page 11) "Claims 1, 11, 21, And 28 Are Not Properly Rejected Under The Judicially Created Doctrine Of Double Patenting Over Marks". Appellant states "Independent claims 1, 11, 21 and 28 provide, *inter alia*, for an intelligent peripheral (IP) that **determines if a subscriber line is busy by placing a call to the subscriber line**". Furthermore, Appellant adds "However, Marks teaches and claims placing a call from the IP to the subscriber line **after determining that the subscriber line is idle**". In conclusion, Appellant states "Thus, Marks neither teaches nor fairly suggests Applicant's claimed Invention". However, Examiner respectfully disagrees with Appellant's statements for the following reason:

There is no difference between the two terms "not busy" and "idle". Determining that the line is "idle" or "not idle" is the same as determining that the line is "not busy" or "busy". Therefore, the IP will place a call to the subscriber line, when the subscriber line is no longer busy (i.e., idle). Therefore, the obviousness –type double patenting rejection is proper.

In brief, Appellant's invention represents a collection of three old and well-known features. First, the general "camp-on-busy" feature as shown in exhibit A is extremely old (called number is busy, then the call is "parked" until called number is available).

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Second, the use of an IP to perform functions and tasks to reduce the workload on network element. Third, to determine when a busy line becomes available by either monitoring the line or by making phone calls to the busy line until it answers. Thus, the old "camp-on-busy" by an IP does not rise to the level of patentability.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,  
Rasha S. Al-Aubaidi  
March 14, 2006

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